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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

ROBERT A. DOUGLAS, on behalf of himself
and those similarly situated,

Plaintiff

v.

HAIER AMERICA TRADING, LLC and
GENERAL ELECTRIC COMPANY,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

FILED

JUN 15 2011

RICHARD W. NIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

99 # 890

S' Less paid

CV 11-02950 PSG

1 Plaintiff Robert A. Douglas, by his undersigned attorneys, brings this class action complaint
 2 against Haier America Trading, LLC and the General Electric Company. Plaintiff's allegations are
 3 based upon personal knowledge as to his own acts and upon information and belief as to all other
 4 matters.

5 NATURE OF THE ACTION

6 1. This is a class action against Haier America Trading, LLC ("Haier") and the General
 7 Electric Company ("GE") for selling freezers illegally in violation of the energy efficiency
 8 standards established by the National Appliance Energy Conservation Act ("NAECA"), codified at
 9 42 U.S.C. §§ 6291-6309, and for misrepresenting the energy efficiency of such freezers on the
 10 ENERGYGUIDE labels affixed thereto. The "Mislabeled Freezers" include the following models:

11 Haier HMC050

12 Haier HNCM070E

13 Haier HUF205EA

14 GE Model FCM7SU (manufactured by Haier)

15 2. NAECA establishes Federal standards for energy consumption for freezers and other
 16 home appliances. The energy consumption standards vary depending on the size and configuration
 17 of the freezer. For a 5 cubic-foot compact chest freezer, such as the Haier HMC050, the maximum
 18 energy consumption allowed by NAECA is 242 kWh/yr (kilowatt-hours per year). For a 7 cubic-
 19 foot compact chest freezer, such as the Haier HNCM070E and GE Model FCM7SU, the maximum
 20 energy consumption allowed by NAECA is 279 kWh/yr. For a 20.5 cubic-foot upright freezer with
 21 automatic defrost, such as the Haier HUF205EA, the maximum energy consumption allowed by
 22 NAECA is 767 kWh/yr. Each of the Mislabeled Freezers consumes more energy than is permitted
 23 by these standards.

24 3. Haier and GE affixed ENERGYGUIDE labels to the Mislabeled Freezers that
 25 substantially understated their actual energy consumption, and showed energy consumption levels
 26 that complied with NAECA. Independent testing later showed those labels were false, and that the
 27
 28

1 Mislabeled Freezers consumed substantially more energy than what was represented on the
2 EnergyGuide labels.

3 4. Plaintiff Robert A. Douglas purchased a GE Model FCM7SU freezer on November
4 14, 2010. Mr. Douglas paid \$168.00 plus \$16.38 in sales tax to purchase this freezer. The energy
5 efficiency standards established by NAECA require this model to consume no more than 279
6 kWh/yr. Haier and GE marked this freezer with an ENERGYGUIDE label stating it consumed 277
7 kWh/yr. Independent testing later showed this freezer consumes 442 kWh/yr, which exceeds the
8 maximum energy consumption permitted under NAECA by 163 kWh/yr. Thus, it was illegal to sell
9 this freezer in the United States.

10 5. If the truth about the energy efficiency of this freezer had been disclosed, Mr.
11 Douglas would not have purchased it, and neither Haier nor GE would have been permitted to sell
12 it, since it was illegal to sell this freezer in the United States.

13 6. The truth about the Mislabeled Freezers was uncovered by independent testing
14 conducted by Consumer Reports. A summary of those test results is set forth below:

MODEL	MAXIMUM ENERGY USE PERMITTED BY NAECA	LABELLED ENERGY USE	INDEPENDENT TEST RESULTS
HAIER HCM050EC	242*	240	444
HAIER HNCM070E	279	276	442
GE FCM7SUWW	279	277	442
HAIER HUF205EA	767	689	943

23
24 *All energy use figures are reported in kWh/yr (kilowatt-hours per year).

25 7. Mr. Douglas suffered a loss of money as a result of the illegal sale of the freezer in
26 the amount of the purchase price paid, \$184.38. Mr. Douglas also has suffered and continues to
27 suffer loss of money in the form of increased energy costs. The Association of Home Appliance
28

Manufacturers ("AHAM") – which counts both GE and Haier among its members – estimates that chest freezers have an average useful life of 18 years.¹ The actual energy consumption of the Mislabelled Freezer purchased by Mr. Douglas exceeds the maximum allowed by NAECA by 163 kWh/yr. Over an assumed 18-year life of the freezer, starting with the average energy retail price for residential consumers in Tennessee for 2010 (8.19 cents / kWh), and assuming energy prices will experience a compound annual growth rate of 2.653%, Mr. Douglas will pay \$337.85 in additional energy costs, over and above what he would have paid if the freezer actually met the maximum energy consumption standard permitted by NAECA. Mr. Douglas will pay \$342.00 in additional energy costs, over and above what he would have paid if the freezer actually met the energy consumption standard stated on its ENERGYGUIDE label.

8. The loss of money in the form of increased energy costs can similarly be calculated for each model purchased by class members, as illustrated below:

MODEL	MAXIMUM ENERGY USE PERMITTED BY NAECA	LABELLED ENERGY USE	INDEPENDENT TEST RESULTS	EXCESS ENERGY COSTS OVER NAECA	EXCESS ENERGY COSTS OVER LABEL
HAIER HCM050EC	242*	240	444	\$ 418.69	\$ 422.84
HAIER HNCM070E	279	276	442	\$ 337.85	\$ 344.07
GE FCM7SUWW	279	277	442	\$ 337.85	\$ 342.00
HAIER HUF205EA	767	689	943	\$ 364.80	\$ 526.47

*All energy use figures are reported in kWh/yr (kilowatt-hours per year).

¹ AHAM's estimates of the Average Useful Life of Major Home Appliances are available at <http://www.aham.org/industry/ht/a/GetDocumentAction/id/5271> (accessed June 13, 2011).

9. Plaintiff Robert A. Douglas is a citizen of Tennessee who resides in Cleveland, Tennessee.

11. Defendant GE is a New York corporation with its principal place of business in Fairfield, Connecticut. The company operates through five segments: Energy, Technology Infrastructure, NBC Universal, Capital Finance and Consumer & Industrial. As part of GE's Consumer and Industrial Segment, GE markets and sells home appliances, including its line of GE branded freezers manufactured by Haier.

12. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because there are more than 100 class members and the aggregate amount in controversy exceeds \$5,000,000.00, exclusive of interest, fees, and costs, and at least one Class member is a citizen of a state different from Defendants.

14. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events giving rise to the claims enumerated herein occurred in this judicial District, and Defendants transact significant business throughout this District and a prior related

1 action, styled *Collins v. Haier America Trading, LLC, et al.*, Case No. 11-02911 (HRL) (the
2 "*Collins Action*"), has been filed and is pending in this District.

3 15. Pursuant to Civil Local Rule 3-2(e), the Federal Courthouse located in San Jose,
4 California is the proper location for this matter because the *Collins Action* has been filed and is
5 pending in this locale.

6 CLASS ACTION ALLEGATIONS

7 16. Plaintiff seeks to represent a class defined as all persons in the United States who
8 purchased a Mislabeled Freezer (hereafter, the "Class"). Excluded from the class are persons or
9 entities that purchased a Mislabeled Freezer for resale, Haier and its subsidiaries and affiliates, and
10 GE and its subsidiaries and affiliates.

11 17. Members of the Class are so numerous that their individual joinder herein is
12 impracticable. Upon information and belief, members of the Class number in the tens of thousands.
13 The precise number of Class members and their identities are unknown to Plaintiff at this time but
14 will be determined through discovery. Class members may be notified of the pendency of this
15 action by mail and/or publication through the distribution records of Defendants and third party
16 retailers and vendors.

17 18. Common questions of law and fact exist as to all Class members and predominate
18 over questions affecting only individual Class members. Common legal and factual questions
19 include, but are not limited to:

- 20 (a) Whether the sale of the Mislabeled Freezers was illegal;
- 21 (b) Whether Haier and GE misrepresented the energy efficiency of the
22 Mislabeled Freezers;
- 23 (c) whether Class members suffered a loss of money or property as a result of the
24 illegal sales;
- 25 (d) whether Class members suffered a loss of money or property as a result of
26 Haier's and GE's misrepresentations concerning the energy efficiency of the Mislabeled Freezers;
27 and

1 (e) whether Class members are entitled to damages, restitution, injunctive and/or
2 monetary relief and, if so, the amount and nature of such relief.

3 19. Plaintiff's claims are typical of the claims of Class members because Plaintiff and
4 each member of the Class purchased a Mislabeled Freezer, and suffered a loss of money as a result
5 of that purchase.

6 20. Plaintiff is an adequate representative of the Class because his interests do not
7 conflict with the interests of the Class members he seeks to represent, he has retained competent
8 counsel experienced in prosecuting class actions, and he intends to prosecute this action vigorously.
9 The interests of Class members will be fairly and adequately protected by Plaintiff and his counsel.

10 21. The class mechanism is superior to other available means for the fair and efficient
11 adjudication of the claims of Plaintiff and Class members. Each individual Class member may lack
12 the resources to undergo the burden and expense of individual prosecution of the complex and
13 extensive litigation necessary to establish Defendants' liability. Individualized litigation increases
14 the delay and expense to all parties and multiplies the burden on the judicial system presented by
15 the complex legal and factual issues of this case. Individualized litigation also presents a potential
16 for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer
17 management difficulties and provides the benefits of single adjudication, economy of scale, and
18 comprehensive supervision by a single court on the issue of Haier's and GE's liability. Class
19 treatment of the liability issues will ensure that all claims and claimants are before this Court for
20 consistent adjudication of the liability issues.

21 **COUNT 1**

22 **Unjust Enrichment**

23 22. Plaintiff incorporates by reference and re-alleges each and every allegation set forth
24 above as though fully set forth herein.

25 23. Plaintiff brings this claim individually and on behalf of the members of the
26 nationwide Class against defendants Haier and GE.

1 24. "The unjust enrichment claim can be made from common classwide proof."
2 *Westways World Travel, Inc. v. AMR Corp.*, 218 F.R.D. 223, 239 (C.D. Cal. 2003) (certifying a
3 nationwide class where plaintiff alleged defendants were unjustly enriched through a common
4 scheme.). "Although there are numerous permutations of the elements of the unjust enrichment
5 cause of action in the various states, there are few real differences. In all states, the focus of an
6 unjust enrichment claim is whether the defendant was *unjustly* enriched. At the core of each state's
7 law are two fundamental elements – the defendant received a benefit from the plaintiff and it would
8 be inequitable for the defendant to retain that benefit without compensating the plaintiff. The focus
9 of the inquiry is the same in each state." *In re Mercedes-Benz Tele Aid Contract Litig.*, 257 F.R.D.
10 46, 58 (D.N.J. Apr. 24, 2009), *quoting Powers v. Lycoming Engines*, 245 F.R.D. 226, 231 (E.D. Pa.
11 2007).

12 25. Plaintiff and Class members conferred a benefit on Haier and GE by purchasing the
13 Mislabeled Freezers.

14 26. Haier and GE have been unjustly enriched in retaining the revenues derived from
15 Class members' purchases of the Mislabeled Freezers, which retention under these circumstances is
16 unjust and inequitable because the sale of the Mislabeled Freezers was illegal, and because Haier
17 and GE misrepresented the energy efficiency of the Mislabeled Freezers, and caused the Plaintiff
18 and Class members to lose money as a result thereof. Plaintiff and Class members suffered a loss of
19 money as a result of Haier's and GE's unjust enrichment because: (a) they would not have
20 purchased the Mislabeled Freezers on the same terms if the true facts concerning their energy
21 consumption had been known; (b) they paid a price premium due to the mislabeling of the freezers
22 as more energy efficient than they actually were; (c) the Mislabeled Freezers did not perform as
23 promised; and (d) Plaintiff and Class members have paid and will continue to pay higher energy
24 costs for as long as they continue to use the Mislabeled Freezers.

25 27. Because Haier's and GE's retention of the non-gratuitous benefit conferred on them
26 by Plaintiff and Class members is unjust and inequitable, Haier and GE must pay restitution to
27 Plaintiff and the Class members for their unjust enrichment, as ordered by the Court.

COUNT 2**Intentional Misrepresentation**

28. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

29. Plaintiff brings this claim individually and on behalf of the members of the nationwide Class against defendants Haier and GE.

30. Haier and GE willfully, falsely, and knowingly misrepresented material facts relating to the character and quality of the Mislabeled Freezers. These misrepresentations were contained in the ENERGYGUIDE labels Haier and GE affixed to each Mislabeled Freezer, as well as on Haier's and GE's websites, in various media advertising, and point of sale materials disseminated or caused to be disseminated by Haier and GE, and their officers, agents, representatives, servants, or employees of Haier and GE, acting within the line and scope of their authority, so employed by Haier and GE to merchandise and market the Mislabeled Freezers.

31. Haier's and GE's representations were made with the intent that the general public, including Plaintiff and Class members, rely upon them. Haier's and GE's representations were made with knowledge of the falsity of such statements, or in reckless disregard of the truth thereof.

32. In actual and reasonable reliance upon Haier's and GE's misrepresentations, Plaintiff and Class members purchased the Mislabeled Freezers for their intended and reasonably foreseeable purposes. Plaintiff and Class members were unaware that the sale of the Mislabeled Freezers was illegal, and were unaware of the true facts concerning the energy efficiency of the Mislabeled Freezers, which facts Haier and GE suppressed and failed to disclose. If Plaintiff and Class members had been aware of the suppressed facts, Plaintiff and Class members would not have purchased the Mislabeled Freezers.

33. Plaintiff and Class members are informed and believe, and thereon allege, that Haier and GE misrepresented material facts with the intent to defraud Plaintiff and Class members. Plaintiff and Class members were unaware of the intent of Haier and GE and relied upon the representations of Haier and GE in agreeing to purchase the Mislabeled Freezers.

3 35. In actual and reasonable reliance upon Haier's and GE's misrepresentations, Plaintiff
4 and Class members purchased the Mislabeled Freezers and experienced energy usage far above the
5 levels represented, the direct and proximate result of which was injury and harm to Plaintiff and
6 Class members because: (a) they would not have purchased the Mislabeled Freezers on the same
7 terms if the true facts concerning their energy consumption had been known; (b) they paid a price
8 premium due to the mislabeling of the freezers as more energy efficient than they actually were; (c)
9 the Mislabeled Freezers did not perform as promised; and (d) Plaintiff and Class members have paid
10 and will continue to pay higher energy costs for as long as they continue to use the Mislabeled
11 Freezers.

COUNT 3

Fraudulent Concealment / Nondisclosure

14 36. Plaintiff incorporates by reference and re-alleges each and every allegation set forth
15 above as though fully set forth herein.

37. Plaintiff brings this claim individually and on behalf of the members of the nationwide Class against defendants Haier and GE.

18 38. Haier and GE knew at the time of sale that they had falsely reported the results of
19 efficiency testing for the Mislabeled Freezers, and that such freezers did not meet the energy
20 efficiency standards required by federal law or reported on the ENERGYGUIDE labels.

21 39. Haier and GE fraudulently concealed from and/or intentionally failed to disclose to
22 Plaintiff and the Class the actual energy consumption of the Mislabeled Freezers.

40. Haier and GE had exclusive knowledge of the false energy efficiency ratings at the time of sale. The defect (excess energy consumption) is latent and not something that Plaintiff or Class members, in the exercise of reasonable diligence, could have discovered independently prior to purchase, because it is not feasible for individual consumers to conduct their own energy efficiency testing prior to purchase.

1 41. Haier and GE had the capacity to, and did, deceive Plaintiff and Class members into
2 believing that they were purchasing freezers that could legally be sold in the United States, and also
3 deceived Plaintiff and Class members about the energy efficiency of the Mislabeled Freezers.

4 42. Haier and GE undertook active and ongoing steps to conceal the defect. Plaintiff is
5 aware of nothing in Haier's and GE's advertising, publicity or marketing materials that discloses the
6 truth about the defect, despite Haier's and GE's awareness of the problem.

7 43. The facts concealed and/or not disclosed by HAIER to Plaintiff and the Class are
8 material facts in that a reasonable person would have considered them important in deciding
9 whether to purchase (or to pay the same price for) a freezer.

10 44. Haier and GE had a duty to disclose a proper estimate of the energy consumption of
11 the Mislabeled Freezers at the time of sale, including on the ENERGYGUIDE label required by
12 federal law.

13 45. Haier and GE intentionally concealed and/or failed to disclose a proper estimate of
14 the energy consumption of the Mislabeled Freezers for the purpose of inducing Plaintiff and the
15 Class to act thereon.

16 46. Plaintiff and the Class justifiably acted or relied upon the concealed and/or non-
17 disclosed facts to their detriment, as evidenced by their purchase of the Mislabeled Freezers.

18 47. Plaintiff and Class members suffered a loss of money as a result of Haier's and GE's
19 fraudulent concealment and nondisclosure because: (a) they would not have purchased the
20 Mislabeled Freezers on the same terms if the true facts concerning their energy consumption had
21 been known; (b) they paid a price premium due to the mislabeling of the freezers as more energy
22 efficient than they actually were; (c) the Mislabeled Freezers did not perform as promised; and (d)
23 Plaintiff and Class members have paid and will continue to pay higher energy costs for as long as
24 they continue to use the Mislabeled Freezers.

COUNT 4

Negligent Misrepresentation

48. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

49. Plaintiff brings this claim individually and on behalf of the members of the nationwide Class against defendants Haier and GE.

50. Haier and GE represented that the Mislabeled Freezers were legal for sale in the United States, and that they had been tested and shown to have the levels of energy efficiency indicated on the ENERGYGUIDE labels.

51. These representations were material facts that influenced Plaintiff's and Class members' purchase of the Mislabeled Freezers.

52. Haier and GE made these representations with the intent to induce Plaintiff and Class members to act upon them purchasing the Mislabeled Freezers.

53. At the time Haier and GE made these representations, Haier and GE knew or should have known that these representations were false or made them without knowledge of their truth or veracity.

54. Plaintiff and Class members justifiably and detrimentally relied on these representations and, as a proximate result thereof, have and will continue to suffer damages in the form of lost money from the purchase price and increased energy costs over the life of the Mislabeled Freezers.

55. Plaintiff and Class members suffered a loss of money as a result of Haier's and GE's wrongful conduct because: (a) they would not have purchased the Mislabeled Freezers on the same terms if the true facts concerning their energy consumption had been known; (b) they paid a price premium due to the mislabeling of the freezers as more energy efficient than they actually are; (c) the Mislabeled Freezers did not perform as promised; and (d) Plaintiff and Class members have paid and will continue to pay higher energy costs for as long as they continue to use the Mislabeled Freezers.

PRAYER FOR RELIEF

56. WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks judgment against Defendants, as follows:

- a. For an order certifying the nationwide Class under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff as Class Representative and his attorneys as Class Counsel to represent the Class members;
- b. For an order declaring that Defendants' conduct violates the law as referenced herein;
- c. For an order finding in favor of Plaintiff and the Class on all counts asserted herein;
- d. For an order awarding compensatory, treble, and punitive damages in amounts to be determined by the Court and/or jury;
- e. For prejudgment interest on all amounts awarded;
- f. For an order of restitution and all other forms of equitable monetary relief;
- g. For injunctive relief as pleaded or as the Court may deem proper; and
- h. For an order awarding Plaintiff and the Class their reasonable attorneys' fees and expenses and costs of suit.

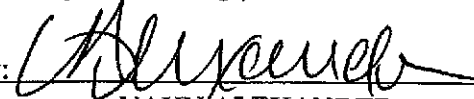
DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury of all issues so triable.

Dated: June 15, 2011.

Respectfully submitted,

FARUQI & FARUQI, LLP

By: 
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